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*Kevin L. Smith*

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**IN THE  
COURT OF APPEALS OF INDIANA**

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APPEAL FROM THE GREENE SUPERIOR COURT  
The Honorable J. David Holt, Judge  
Cause No.28D01-0803-FD-141

February 20, 2009

**BRADFORD, Judge**

Appellant-Defendant James Hayes appeals following his convictions for Possession of Methamphetamine, a Class D felony<sup>1</sup> and Possession of Paraphernalia, a Class A misdemeanor.<sup>2</sup> On appeal, Hayes contends that the trial court abused its discretion in admitting evidence seized following his warrantless arrest for public intoxication. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

At some point during the late evening of March 14, 2008, or the early morning of March 15, 2008, Carol Couch heard what she believed to be the sound of a moped starting outside her home in Bloomfield, Indiana. Couch looked out her front window and saw a man, later identified to be Hayes, standing in front of a dumpster outside of Sharon's Bar. Couch recognized Hayes as someone she had seen entering Sharon's Bar earlier that day. Hayes was mumbling and was "kind of leaned over a little bit and kind of doing circles." Tr. p. 151. Hayes, who continued to mumble and walk around in circles, was also "wallowing quite a bit, stumbling, [and] wasn't walking straight." Tr. p. 151. Couch became concerned after she watched Hayes stumble into the middle of the street, so she called 911.

Greene County Sheriff's Deputy Skylar Pittman and Bloomfield Police Officers Jordan Hasler and James Deckard arrived at Sharon's Bar approximately two minutes after being dispatched. When the officers arrived, Hayes was standing in the street with his "shoulders slouched, very off balance swaying side to side." Tr. p. 186. Officer Deckard

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<sup>1</sup> Ind. Code § 35-48-4-6 (2007).

<sup>2</sup> Ind. Code §§ 35-48-4-8.3(a)-(b) (2007).

asked Hayes if he was feeling okay, but Hayes's response was "hard to understand, it was mumbled, it was very slurred speech, just very thick tongued." Tr. p. 187. Officer Hasler then asked Hayes why he was "in the middle of the road tonight." Tr. p. 189. Hayes replied, "I don't know. How did I get here?" Tr. pp. 189-90. Officer Hasler observed that Hayes's "dress was very uncoordinated," his "motor skills were very off, very slow, very slurred speech," his eyes were watery and bloodshot, his pupils were dilated, and his "posture was just very off balance, swaying side to side." Tr. p. 190. Officer Hasler also observed that Hayes's demeanor "became more aggressive towards the end [of their encounter] because he wasn't sure where he was at or how he got there." Tr. p. 190. At some point, Hayes's coat, which was unzipped, opened and Officer Deckard noticed that Hayes had two syringes in the left, inside pocket. Deputy Pittman and Officers Hasler and Deckard believed that Hayes was intoxicated.

Hayes was arrested following his encounter with Officers Hasler and Deckard. After Hayes was placed under arrest, Officer Hasler searched Hayes and removed two pocket knives, two syringes that had needles attached to them, a glass smoking device with residue inside and burn marks, two pairs of gloves, a digital scale, \$108 in cash, a couple of lighters, and some smoking tobacco. The residue inside the pipe was later determined to contain methamphetamine.

On March 20, 2008, the State charged Hayes with possession of methamphetamine, possession of paraphernalia, and public intoxication. Hayes filed a motion to suppress certain evidence on May 9, 2008. The trial court denied Hayes's motion to suppress after

hearing arguments by the parties. On July 2, 2008, a jury found Hayes guilty of possession of methamphetamine and possession of paraphernalia. On July 25, 2008, the trial court sentenced Hayes to three years of incarceration.

### **DISCUSSION AND DECISION**

The sole issue on appeal is whether the trial court abused its discretion in admitting the evidence found on Hayes's person following his warrantless arrest for public intoxication.

A trial court has broad discretion in ruling on the admissibility of evidence. Accordingly, we will reverse a trial court's ruling on the admissibility of evidence only when the trial court abused its discretion. An abuse of discretion involves a decision that is clearly against the logic and effect of the facts and circumstances before the court.

*Washington v. State*, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003).

Initially, we note that the State contends that Hayes has waived his challenge to the admission of much of the evidence discovered during Officer Hasler's search of Hayes following his arrest. Officer Hasler testified, without objection, about the items recovered from Hayes's person, specifically two pocket knives, two syringes with needles attached, a digital scale, a glass smoking device with burn marks and residue, and cash. Although Hayes did not object to Officer Hasler's testimony, he did object to the admission of the glass smoking device which contained residue that was later determined to be methamphetamine. Because Hayes objected to the admission of the glass smoking device, which not only supported his possession of paraphernalia conviction, but also contained the evidence supporting his possession of methamphetamine conviction, we will consider Hayes's

challenge, but only with respect to the admissibility of this particular item. *Haycraft v. State*, 760 N.E.2d 203, 211-12 (Ind. Ct. App. 2001) (providing that failure to make a timely objection to the admission of evidence results in waiver of appellate review of the issue), *trans. denied*.

Hayes contends that the trial court abused its discretion in admitting the glass smoking device because the police did not have probable cause to arrest him for public intoxication. Specifically, Hayes claims that the police lacked probable cause because they did not know the source of his intoxication. Hayes, however, has presented no authority requiring that officers know the source of the individual's intoxication in order to have probable cause, and we are aware of none.

The Fourth Amendment protects both the privacy and possessory interests by prohibiting unreasonable searches and seizures. *Taylor v. State*, 659 N.E.2d 535, 537 (Ind. 1995). Because the Fourth Amendment generally requires a warrant for a search of one's person, the burden lies on the State to justify the warrantless search on Constitutional grounds. *Id.* One exception to the warrant requirement is a search incident to a lawful arrest. *Gibson v. State*, 733 N.E.2d 945, 953 (Ind. Ct. App. 2000). An officer may conduct a warrantless search of the arrestee's person incident to a lawful arrest. *Id.* Evidence resulting from a search incident to a lawful arrest is admissible at trial. *Id.*

Here, Officer Hasler searched Hayes following his warrantless arrest for public intoxication. A warrantless arrest must be based on probable cause. *Hampton v. State*, 468 N.E.2d 1077, 1079 (Ind. Ct. App. 1984). The question of whether there is probable cause for

the arrest is determined by the facts and circumstances within the knowledge of the officer at the time of the arrest. *Id.* Probable cause to arrest exists where the officer has knowledge of facts and circumstances that would warrant a man of reasonable caution to believe that a suspect has committed the criminal act in question. *Sebastian v. State*, 726 N.E.2d 827, 830 (Ind. Ct. App. 2000), *trans. denied*. The amount of evidence necessary to meet the probable cause requirement for a warrantless arrest is determined on a case-by-case basis. *Griffith v. State*, 788 N.E.2d 835, 840 (Ind. 2003). A defendant's subsequent acquittal of the charged offense does not alter the validity of the arresting officer's on-the-scene probable cause determination. *Leitch v. State*, 736 N.E.2d 1284, 1287 (Ind. Ct. App. 2000), *trans. denied*.

When Officers Hasler and Deckard approached Sharon's Bar, Hayes was standing in the street with his shoulders slouched, swaying from side to side. Hayes's responses to the officers' questions were mumbled, and his speech was slurred. Hayes's motor skills were impaired, and his balance was off. Hayes did not know where he was or how he got there. His eyes were watery and bloodshot, and his pupils were dilated. Both Officers Hasler and Deckard, as well as Deputy Pittman, believed that Hayes was intoxicated. This evidence is sufficient to establish that Officers Hasler and Deckard had probable cause to believe that Hayes was intoxicated in public, and we conclude that Hayes's warrantless arrest was therefore lawful. *Ballinger v. State*, 717 N.E.2d 939, 943 (Ind. Ct. App. 1999) (providing that impaired attention and reflexes, watery or bloodshot eyes, unsteady balance, and slurred speech can be evidence of intoxication). Furthermore, in light of our conclusion that Hayes's arrest for public intoxication was lawful, we conclude that the trial court properly admitted

the glass smoking device containing methamphetamine residue recovered during Officer Hasler's subsequent search of Hayes's person.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and MAY, J., concur.